UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM ELLHAMER, Appellant, vs. L. E. WILSON, Warden, Appellee.	)	No. 21,899

APPELLEE'S BRIEF

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TABLE OF CASES

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APPELLEE'S BRIEF

JURISDICTION

The jurisdiction of the United States District Court, Northern District of California, to entertain appellant's application for a writ of habeas corpus was conferred by Title 28, United States Code, section 2241. The jurisdiction of this Court is conferred by Title 28, United States Code section 2253.

STATEMENT OF THE CASE

On February 24, 1953, appellant was convicted in the Superior Court of Los Angeles County, after trial by jury, of three counts of the offense of first degree robbery in violation of California Penal Code section 211. He was sentenced to state prison for the term prescribed by law, the sentences to run concurrently. A certified copy of this judgment and order of commitment is annexed hereto in the

Appendix as "Exhibit A".[1] On February 17, 1959, appellant's sentences were fixed at 10 years each; on September 4, 1959, he was paroled. See Summary of Sentence Data appended as "Exhibit B."

On June 8, 1961, appellant was again convicted in the Superior Court for the County of Los Angeles of robbery in violation of California Penal Code section 211. Probation was denied and appellant sentenced to the state prison for the term prescribed by law, the sentence to run consecutively with that imposed for the 1953 conviction. A copy of the 1961 judgment and order of commitment is annexed hereto in the Appendix as "Exhibit C."

On June 21, 1961, appellant was charged with violating his parole on the 1953 conviction. It was charged that he violated the conditions of his parole by committing robbery in the first degree as evidenced by the 1961 conviction. It was also charged that he violated the conditions of his

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1. "Exhibit A," together with the other exhibits in appellee's Appendix serve to explain matters which relate to appellant's present claim for relief. The Court of Appeals may take notice of these records of proceedings in the state and federal courts which relate to appellant's claim of relief. See, Lambert v. Conrad, 308 F.2d 571 (9th Cir. 1962); St. Paul Fire & Marine Insurance Co. v. Cunningham, 257 F.2d 731, 732 (9th Cir. 1958); United States ex rel. Pavloc v. Chairman of Board of Parole, 81 F.Supp. 592, 593 (W.D. Pa. 1948), aff'd on opinion below, 175 F.2d 780 (3rd Cir. 1949) [cited with approval in Stiltner v. Rhay, 322 F.2d 314, 316 n. 6 (9th Cir. 1963)].

parole by associating with other exfelons and active parolees without the specific approval of his parole agent or the Adult Parole Division. A copy of the charges filed by the Adult Parole Division are appended as "Exhibit D."

On June 30, 1961, appellant's parole was revoked and his sentence refixed at maximum for the reasons contained in the charges brought by the Adult Parole Division. A certification of the Adult Authority action and the minutes of the June 30th are annexed in the Appendix as EXHIBITS "E" and "F" respectively. He appealed the 1961 conviction to the California District Court of Appeal, Second Appellate District, Division Four, which affirmed the conviction on February 1, 1962. People v. Ellhamer, 199 Cal.App.2d 777 (1962); 18 Cal.Rptr. 905 (1962).

On July 31, 1963, a petition for a writ of habeas corpus was filed in the California Supreme Court and was denied on October 1, 1963. In re Ellhamer, Crim. No. 7478. On March 5, 1964, a second petition for writ of habeas corpus was filed in the California Supreme Court. This petition was denied on April 15, 1964. In re Ellhamer, Crim. No. 7803.

On August 27, 1964, appellant's application for habeas corpus, which attacked the 1961 conviction, was denied by the United States District Court for the Northern District of California, No. 42326. In denying the petition, the Court determined that, as appellant was properly imprisoned under

one valid state conviction, he could not question the validity of another state conviction and cited McNally v. Hill, 293 U.S. 131, 55 S.Ct. 24, 79 L.Ed. 238 (1934).

A petition for rehearing on the matter was denied September 24, 1964. Notice of Appeal was filed on October 9, 1964. On January 9, 1965, this Court in Misc. 2162, treated the notice as an application for a certificate of probable cause for appeal and denied it as premature. When appellant applied to the District Court for a certificate of probable cause, the application was denied on January 26, 1965, because the time for filing had expired. On March 3, 1965, this Court denied petitioner's application for a certificate of probable cause on the same basis as the original denial of the petition in the District Court. A petition for writ of habeas corpus filed with the United States Supreme Court was treated as a petition for writ of certiorari and denied October 18, 1965. Misc. 256, October Term, 1965.

An application for writ of habeas corpus filed with the Superior Court of Marin County was denied on July 21, 1966. In re Ellhamer, No. 46113. On September 11, 1966, appellant filed a petition for writ of habeas corpus in the United States District Court for the Northern District of California. The petition, in an action numbered 45532, was denied on December 7, 1966.

The petition for writ of habeas corpus which is

the subject of this action was filed in the United States District Court, Northern District of California, on or about April 10, 1967 and numbered 46545. On April 6, 1967, the petition was denied on the ground that the court lacked jurisdiction under the doctrine of McNally v. Hill, 293 U.S. 131, 55 S.Ct. 24, 79 L.Ed. 238 (1934). In the order denying the writ of habeas corpus, the District Court noted that in light of Martin v. Commonwealth of Virginia, 349 F.2d 781 (4th Cir. 1965) and Arketa v. Wilson, 373 F.2d 582 (9th Cir. 1967), appellant's contention that McNally did not deprive the court of jurisdiction, had possible merit.

Appellant filed notice of appeal and applied for a certificate of probable cause and leave to appeal in forma pauperis. A certificate of probable cause and leave to appeal in forma pauperis were issued by the District Court on April 27, 1967.

ARGUMENT

AS APPELLANT IS IN CUSTODY PURSUANT TO CONVICTIONS WHICH HE HAS NOT ATTACKED, THE DISTRICT COURT WAS WITHOUT JURISDICTION TO CONSIDER HIS ATTACK ON A SUBSEQUENT CONVICTION.

While on parole for convictions in 1953, the terms for which had been set at 10 years, appellant suffered a subsequent conviction. An Adult Authority hearing was held to consider charges that appellant had violated the conditions of his parole, which was revoked and the terms on the 1953

convictions refixed at an indeterminate life sentence.

Appellant's sole contention is that, in light of recent decisions which have re-interpreted McNally v. Hill, 293 U.S. 131, 55 S.Ct. 24, 79 L.Ed. 238 (1934), the unquestioned validity of the original conviction on which parole was revoked does not deprive the District Court of jurisdiction to consider his attack upon the validity of his subsequent conviction. Appellee submits that McNally v. Hill, is controlling and that the District Court properly declined to consider the merits of appellant's petition.

One of the decisions relied upon by petitioner, Martin v. Commonwealth of Virginia, 349 F.2d 781 (4th Cir. 1965) holds that when a conviction results in a petitioner's ineligibility for parole on a prior conviction, habeas corpus is available to attack the validity of the subsequent sentence. This holding is contrary to McNally v. Hill, which holds that habeas corpus is available to attack a sentence presently being served only when the court can order a release from custody. The theory of Martin is that a prisoner is sufficiently "in custody" under the subsequent sentence to satisfy the statutory language of 28 United States Code section 2241 when that sentence has the effect of denying him eligibility for parole. Martin v. Commonwealth of Virginia, 349 F.2d 781, 783 (4th Cir. 1965)

In Martin, the Fourth Circuit noted the express holding of McNally v. Hill, 239 U.S. 131, 55 S.Ct. 24, 79 L.Ed. 238 (1934) that a sentence which the prisoner had not begun to serve did not satisfy the requirement of "custody" even though a result of the challenged sentence was to thwart his eligibility for parole, then held to the contrary. The rationale for the court's refusal to follow McNally was that the rule had been so eroded by subsequent decisions of the Supreme Court that it no longer represented the opinion of that Court. Martin justified the deviation in part on Jones v. Cunningham, 371 U.S. 236, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963) which held that parole was sufficient "custody" to grant a Federal District Court habeas corpus jurisdiction under 28 U.S.C.A. § 2241 (1959).

While this is the holding of Jones, there was no issue there involving McNally. The prisoner attacked the precise sentence which he was then serving on the ground that he had been wrongfully sentenced as a habitual offender because of an invalid prior conviction. The decision simply held that the prisoner's release on parole did not moot his application for habeas relief. Jones affords no justification for a determination that McNally presently lacks vitality. Jones merely redefines the term "custody" within the context of the proposition that a prisoner may only attack the validity of a sentence which is the basis of his present

restraint. Martin constitutes an unwarranted deviation from this proposition.

Nor is Martin justified by Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963). Indeed, in equating "custody" with "restraint of liberty" and in noting that it was a prerequisite to habeas, the Court in Fay v. Noia reaffirmed McNally. The Court, citing McNally noted that the only remedy available on habeas is some form of discharge from custody. Fay v. Noia, supra, 372 U.S. at 427, fn. 38.

Assuming for purposes of argument that Martin is sound, it is factually distinguishable from the instant case. Appellant, as distinguished from the petitioner in Martin, does not question the validity of a conviction which has the effect of rendering him ineligible for parole. He is presently eligible for parole not withstanding the subsequent conviction which is presently in issue.

Nor are we able to ascertain the applicability of Arketa v. Wilson, 373 F.2d 582 (9th Cir. 1967) to the facts in the instant case. In Arketa this Court held that a state prisoner whose adjudication as a habitual criminal resulted in his ineligibility for probation was entitled to attack the validity of a prior conviction on federal constitutional grounds. Though probation has been equated with parole, Arketa fails to support appellant's claim of jurisdiction.

As previously noted, the conviction which appellant seeks to attack has no effect on his eligibility for parole on his admittedly valid prior conviction. In Arketa, the effect of the prior conviction attacked by petitioner was to deprive him of the right to consideration for probation and to compel a prison sentence.

The sentence for appellant's earlier conviction, the validity of which he does not attack, is now fixed at life imprisonment. but in spite of his subsequent conviction, he is eligible for parole. Since a federal determination that his subsequent conviction is invalid would not affect the lawfulness of his present state custody, the federal courts are without habeas jurisdiction. McNally v. Hill, 293 U.S. 131, 55 S.Ct. 24, 79 L.Ed.2d 238 (1934); Barquera v. People of the State of California, 374 F.2d 177 (9th Cir. 1967); Dyer v. Wilson, 363 F.2d 955 (9th Cir. 1966).

A possible basis for an exception to McNally is that established by Ex parte Hull, 312 U.S. 546, 61 S.Ct. 640; 85 L.Ed. 1034 (1941). Hull holds that McNally does not apply when probation or parole relating to a prior conviction is revoked solely on the basis of a subsequent conviction. Smith v. Wilson, 371 F.2d 681, 684 (9th Cir. 1967); Wilson v. Gray, 345 F.2d 282, 284 (9th Cir. 1965). There is, no proscription against the parole authorities' consideration of the facts relating to a subsequent offense

in determining whether parole should be revoked. In re Anderson, 107 Cal.App.2d 670, 237 P.2d 720 (1951).

The Adult Authority records indicate that the first charge of parole violation was that appellant did so by committing robbery in the first degree and the supporting evidence submitted on the report from the Adult Parole Division to the Adult Authority spells out in some detail the facts relating to a super market robbery by appellant and his accomplice.

Furthermore, it is clear from the cases which have interpreted Hull that this exception to McNally is simply that the subsequent conviction may not be the sole reason for the revocation of probation or parole under a prior conviction. It is not applicable when apart from the subsequent conviction there are other violations which also afford justification for the revocation. In Wilson v. Gray, 345 F.2d 282, 284 (9th Cir. 1965) this Court reversed a district court finding that petitioner's probation was revoked as the result of his conviction of a subsequent offense. The record from the district court indicated that in revoking probation, the sentencing court also took other matters into consideration. This Court stated:

> "The record clearly indicates that the . . . decision revoking appellee's probation was predicated upon the appellee's conduct, only a portion of which

constituted the offense of which he was charged and for which he was convicted, and not solely by reason of his conviction of that offense." Wilson v. Gray, 345 F.2d 282, 284-86 (9th Cir. 1965).

The records in the instant case evidence the bases for the revocation of appellant's parole on the prior conviction. Appellant faced two charges of violating the conditions of his parole. The first was that he violated Condititon 11 of his parole by committing robbery in the first degree as evidenced by his conviction on May 9, 1961. The second was that appellant violated Condition 8 of his parole by associating with other ex-felons and active parolees without the specific approval of his parole agent or the Adult Parole Division. See EXHIBIT "D." The minutes of the Adult Authority proceeding at which appellant's parole was revoked reflect that both charges afforded the bases for the revocation of his parole by the Adult Authority. See EXHIBIT "F" appended hereto.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the District Court correctly determined its lack of jurisdiction and that the order denying the petition

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for writ of habeas corpus should be affirmed.

DATED: October 2, 1967

THOMAS C. LYNCH, Attorney General
of the State of California

DERALD E. GRANBERG
Deputy Attorney General

James B. Cuneo

JAMES B. CUNEO
Deputy Attorney General

Attorneys for Appellee

JBC:cmw
CR SF
67-524

CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

DATED: October 2, 1967

James B. Cuneo

JAMES B. CUNEO
Deputy Attorney General

A P P E N D I X

C. I. M.

[illegible] MAR -4 PM 2:24

G.C. ADMITTANCE

DEPT. NO LBE CASE NO. 152703

A-9428

In the Superior Court of the State of California

IN AND FOR THE COUNTY OF LOS ANGELES

ABSTRACT OF JUDGMENT

(Commitment to State Prison as provided by Penal Code Section 1213.5)

The People of the State of California,

vs.

WILLIAM ELLHAMER

Defendant.

Hon. JOSEPH M MALTBY
(Judge of Superior Court)

Lynn Compton
Deputy (District Attorney)

Robert E Krause
(Counsel for Defendant)

This certifies that on the 24th day of February, 19 53 judgment of conviction of the above-named defendant was entered as follows:

In Case No. 152703 Counts No. III, VI & IX he was convicted by Jury (Court or Jury); on his plea of not guilty (guilty, not guilty, former conviction or acquittal, once in jeopardy, not guilty by reason of insanity); of the crime of ROBBERY, first degree

(designation of crime and degree if any, including fact that it constitutes a second or subsequent conviction of same offense if that affects the sentence and if under Section 209 of the Penal Code whether victim suffered bodily harm);

in violation of Section211, Penal Code
(reference to Code or Statute, including Section and Sub-section);

with prior convictions charged [illegible] admitted second prior conviction, first prior having been found true

DATE	COUNTY AND STATE	CRIME	DISPOSITION
1/16/46	Los Angeles County California	Burglary	No disposition alleged
5/24/48	Los Angeles County California	Robbery	State Prison

THE WITHIN INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
ATTEST:

CALIFORNIA STATE PRISON AT SAN QUENTIN
BY [signature]
RECORDS OFFICER
(AFFIX SEAL)

Defendant was c[illegible] (was) or (was not) charged as [illegible] was found to have been armed with a deadly weapon at the time of commission of the offense, [illegible] within the meaning of Penal Code Sections 969c and 3024.

[illegible]BIT A

Defendant **was not** adjudged a habitual criminal within the meaning of Sub-division ____ of
(was) or (was not) (a) or (b)

Section 644 of the Penal Code; and the defendant ____ a habitual criminal in accordance with Sub-division (c)
(is) or (is not)

of that Section.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said defendant be punished by imprisonment in the State Prison of the State of California for the term provided by law, and that he be remanded to the Sheriff of the ____ County of LOS ANGELES and by him delivered to the Director of Corrections of the State of California at the place hereinafter designated.

It is ordered that sentences shall be served in respect to one another as follows ____
(Note whether concurrent or consecutive as to each count).

COUNTS 3, 6 and 9 are ordered to run CONCURRENTLY with each other.

and in respect to any prior incompleted sentence (s) as follows: ____
(Note whether concurrent or consecutive as to all incomplete sentences from other jurisdictions).

To the Sheriff of the ____ County of LOS ANGELES and to the Director of Corrections:

Pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above-named defendant into the custody of the Director of Corrections at **Chino.** ____
at your earliest convenience.

Witness my hand and seal of said court

this **27th** day of **February**

HAROLD J. OSTLY,

Clerk

by ____ Deputy

SEAL

State of California,
____ County of LOS ANGELES } ss.

I do hereby certify the foregoing to be a true and correct abstract of the judgment duly made and entered on the minutes of the Superior Court in the above entitled action as provided by Penal Code Section 1213.

Attest my hand and seal of the said Superior Court this **27th** day of **February** 19**53**

HAROLD J. OSTLY.

County Clerk and Ex-officio Clerk of the Superior Court of the State of California in and for the

County of LOS ANGELES By E. Whitham, Deputy

The Honorable JOSEPH M MALTBY

Judge of the Superior Court of the State of California, in and for the ____ County of

LOS ANGELES

NOTE: If probation was granted in any sentence of which abstract of judgment is certified, attach a minute order reciting the fact and imposing sentence or ordering a suspended sentence into effect.

SUMMARY OF SENTENCE DATA

	Credits Forfeited	Credits Restored	Additional Credits	Discharge Date	Parole Effective Date
~~WANTED~~					
CRIME: Robb. 2nd (211-PC)					
SENTENCE: 1-Life					
COUNTY: Los Angeles					
County Case No: 118979					
JUDGE: F. Miller (PG)					
X 6-15-48 Rec'd. at Guidance Center					
9-18-48 Trans. to San Quentin					
X 6-13-49 TFA 5yrs. Granted last 2½ yrs. on parole.				~~6-15-53~~	~~12-15-50~~
X 12-15-50 Paroled - Los Angeles Dist & Co.					
X JAN 2 1953 PAR. SUSPENDED TRFA maj					
X 3-4-53 SQ PV WNT Rec'd RGC, CIM at lug.	2M 2D				
3-6-53 Trans. to Folsom exit SQ.					
3-9-53 Rec'd SQ.				Life	
6-5-53 PG cts. 1, 4+5 NG cts. 2+3 FG cts. 2+3 Rev. Denied. Place on 3/57 cal.					
~~5/21/53 Wanted, Prosecuting Attorney, Clay Co. Liberty, Mo.~~					
2-21-57 - DENIED P.R. To Mar 58 CAL					
2-26-58 - DENIED - P.P. To 3-59 CAL					
X 2-17-59 TRFA - 10 YRS + FA - 10-10-10 YRS CC & CCWPT - Granted 3 YRS 6 mos on Parole				SEE "A" TERM	
8-17-57 Fel. 2 To HOLD				8-17-58	9-4-59
~~Disc. & Remains~~					
6/23/59 No longer Wanted Prosecuting Attorney, Clay Co, Liberty, Mo.					
7-20-59 - ~~condition of~~ To Go To HOLD REMOVED					
9-4-59 Paroled - Long Beach D - Orange Co					
6-20-61 PV WNT "B" RGC - CIM cswpr					
6-27-61 Rec'd RGC CMF					
6-30-61 ~~Pt. Transferred~~					
9-29-61 Rec'd S.Q.					
10-18-61 PG. Revoked. Denied. Place on 6-66 cal.					
5-15-62 Dep. re ANC - Los Angeles Co.					
1-28-65 Noted. Remains 6-66 Calendar					

EXHIBIT B

A-9428 ELHAMER, William

CDC 112 8-60-5M (5194)

SUMMARY OF SENTENCE DATA

	Credits Forfeited	Credits Restored	Additional Credits	Discharge Date	Parole Effective Date
CRIME: Robb. 1st (211-PC) 3 cts CC & 2 pr fel conv. P&P ea ct.					
TERM: 5-Life 3 cts CC&CC/~~CS~~ WPT ~~not shown~~					
COUNTY: Los Angeles					
County Case No.: 152703					
JUDGE: J. M. Omalley (CT)					
3-4-53 SQ PV WNT REC'D RGC, CIM					
3-6-53 Trans to Folsom enrt S.Q.					
3-9-53 Rec'd S.Q.					
2-26-57 DENIED P.P. TO MAR 58 CAL.					
2-26-58 DENIED P.P. TO 3-59 CAL.					
2-17-59 TFA - IC 10 10 YRS CC					
& CC CONCURRENT - Granted 3½ YRS				3-4-63	9-4-59
CM PAROLE TO GO TO HOLD				~~9-4-59~~	~~3-4-63~~
~~5/5/53 Wanted Prosecuting Attorney Clay Co, Liberty Missouri~~					
6/23/59 No longer Wanted Prosecuting Attorney Clay Co, Liberty, Mo.				C	
9-30-59 condition of TO GO TO HOLD Removed					
9-30-59 Paroled Long Beach D. - Orange Co.					
6-20-61 PV WNT RECVD RGC, CIM				LIFE	
6-27-61 REC'D RGC, CMF					
6-30-61 Parole Cancelled.					
9-29-61 Rec'd S.Q.					
10-18-61 PG Revoked Denied. Place on 6-66 cal.					
5-15-62 dep. per ANC - Los Angeles Co.					
1-28-65 Noted. Remains on 6-66 Cal.					
6-30-66 Denied LL on MR Cal.					
6-27-67 Denied LL on MR Cal.					

SUMMARY OF SENTENCE DATA

	Credits Forfeited	Credits Restored	Additional Credits	Discharge Date	Parole Effective Date
CRIME: Robb 1st w/2 PFC CS WPT 211 PC					
TERM: 5-Life CS WPT					
COUNTY: Los Angeles					
County Case No.: 240891					
JUDGE: L. Drucker CC					
6-20-61 PV WNT REC'D RGC CIM					
6-27-61 REC'D RGC CMF					
9-29-61 Rec'd S. Q.					
5-15-62 Dep. rel ANC - Los Angeles Co.					
1-28-65 Noted. Remains					
on 6-66 cal.					
6-30-66 Denied. Le on MR Cal.					
6-27-67 Denied. Le on MR Cal.					

A-9428-B FELLHAMER, William
Summary of Sentence Data

CDC-112 (30558)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

JUDGMENT

Department No. 105

June 8 19 61 Present Hon. LEWIS DRUCKER Judge

THE PEOPLE OF THE STATE OF CALIFORNIA, vs 240891

WILLIAM ELLHAMER

Deputy District Attorney S Mayerson and the Defendant with counsel, R E Krause, present. Motion for new trial is denied. Defendant was not personally armed. No findings on criminal habitual statute. Probation denied. Sentenced as indicated.

7.0. PACIFIC
762029

Whereas the said defendant having ...been... duly ...found...
guilty in this court of the crime of ROBBERY (Sec 211 PC), a felony, as charged in the information as amended, which the Jury found to be Robbery of the first degree and the Court having found the defendant was not personally armed; admitted prior convictions as alleged, to wit: Robbery, a felony, Superior Court of the State of California, Los Angeles County, May 24, 1948; Robbery, a felony, Superior Court of the State of California, Los Angeles County, February 24, 1953 and served a term in a State Prison for each of said prior convictions

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the State Prison for the term prescribed by law, which sentence is ordered to run CONSECUTIVELY to sentences in Case No. 152703, Counts 3, 6 and 9.

It is further Ordered that the defendant be remanded into the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Director of Corrections at the California State Prison at Chino.

This Minute Order has been

entered on ... JUN 13 1961

HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By ..... Deputy

Prob. ... Aud. ... DMV ...
LAPD .../... Cshr. ... CYA ...
CO. J. .../... Juv. ... C. Clk. ...
Sher. .../... Psyc. Misc. ...

JUDGMENT — State Prison
(Men)

THE WITHIN INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
ATTEST:

76J807B—9/60

CALIFORNIA STATE PRISON AT SAN QUENTIN
BY W. Schulle RECORDS OFFICER

(AFFIX SEAL)

G.C. 1561 JUN 20 1961
G.C. ADMITTANCE

EXHIBIT C

THE WITHIN INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
ATTEST:

CALIFORNIA STATE PRISON
AT SAN Q[illegible]
BY W C Schulli
RECORDS OFFICER

(AFFIX SEAL)

[illegible] TO ADULT AUTHORITY
FROM: [illegible]

Date: 6-21 [illegible]

Name: ELHAMER, William (2nd Termer) Number: A-9428-A

Crime: Robb. 2nd, CC W/F/T; Robb. 1st Degree, 2 Hi[illegible], PC [illegible] ct. CC & [illegible] Term: 10-[illegible] yrs. CC & CC [illegible]

Received: 6-15-48 (S.C.) 3-4-53 Paroled: 2-4-59 Suspended: ______ Reinstated: ______ Expires: [illegible]

Present Location: Reception Guidance Center, Vacaville, California

SUBJECT OF REPORT: VIOLATION

CHARGES SPECIFIED:

(1) William Elhamer did violate Condition 11 of the Conditions of Parole by committing Robbery in the 1st degree, as evidenced by his conviction, on 5-9-61, in Department 105 of the Los Angeles Superior Court, the Honorable Louis Drucker, presiding. He was sentenced to the custody of the Director of Corrections for the term prescribed by law, this sentence to run consecutively with his prior term.

(2) William Elhamer did violate Condition 6 of the Conditions of Parole by associating with other ex-felons and active parolees without the specific approval of his parole agent or the APD.

SUPPORTING EVIDENCE:
Charge 1. On 3-3-61, Elhamer accompanied one Donald Baxter (an active Long Beach District Office parolee) in the perpetration of a robbery at the Lucky Stores, Inc. Market, located at 11020 Alondra Blvd., Norwalk. The Assistant Manager of the Market, Donald McPherson, stated that Baxter had approached him in the middle of the store, pulled a gun out of his jacket, and stated, "This is a stickup, take me to the Manager or I will kill you." He further stated that Baxter put the gun back into his jacket and followed McPherson to the front of the store, where he called the Manager, Mr. Kenneth Green. Baxter then told Mr. Green, "Take me in and give me the money or I will kill you." Manager Green and McPherson went to the office with Baxter, who then pulled out a gun, holding it in his left hand, and gave the Manager a soiled pillowcase, stating, "Put the money in it and hurry up." Green then went alone to the rear of the office and brought the money to Baxter. Baxter then said, "I want it all" and inquired about the safe in the front office. The manager told him that the safe, which had a timelock, contained only change, whereupon Baxter told everyone to stay where they were, and left. McPherson followed and saw Elhamer throwing the money in the rear section of a dark blue 1960 Corvair coupe, License #VBK083.

ELHAMER, WILLIAM A-9428-A APD/[illegible] ago 6-21-61

EXHIBIT D

the car then left the location. It was found that the money taken in the robbery amounted to $1257; 45% one dollar bills, and 160 five dollar bills.

The police apprehended Baxter and Elhamer after sighting the vehicle which was parked in front of an apartment house at 9629 Oak Street in Bellflower.

Elhamer's arraignment was continued to 3-29-61, at which time he pled Not Guilty as charged. He was granted a jury trial and, on 5-9-61, he was found guilty of committing one count of robbery in the first degree. On 6-8-61, probation was denied and the Honorable Louis Drucker sentenced Elhamer to the custody of the Director of Corrections for the term prescribed by law, the sentence to run consecutively with Subject's prior term.

Charge 2. Elhamer wilfully and consciously associated with a person of bad reputation, to wit, parolee Donald Baxter, #69941, his crime partner in the above-mentioned offense. Police officials in Orange County also have intimated that Baxter and Elhamer maintained a swank apartment in the Garden Grove area, and that this apartment was frequently visited by persons of questionable reputation who were well known to the police.

EVALUATION OF PAROLE VIOLATOR:
Inasmuch as the writer has had no personal contact with Elhamer, the only evaluation that can be offered derives from the written record and facts adduced from the particulars of the instant offense. Elhamer is a recidivist well oriented in the ways of crime, who presently appears to be incapable of identifying with the more favorable segment of society. He has a definite proclivity for associating with those who are considered to be more advanced than amateurs in crime, and is prone to commit the more exciting and violent types of offenses. Perhaps some progress, though valueless, can be seen in the fact that Subject played a rather minor role in the perpetration of the instant offense.

Suggestions for Institutional Consideration: It is felt that Subject's institutional program should be designed to develop emotional maturation and appropriate social identification. Of value in this regard, perhaps, would be mandatory enrollment in a living community or similar group activity.

RECOMMENDATION: Parole canceled and return to prison ordered for the reasons set forth in the report of which this order is a part.

Respectfully submitted,

APPROVED:

District Supervisor

Parole Agent I

Regional Administrator

ELHAMER, William A-9428-A PPD/SA pgo 6-21-61

STATE OF CALIFORNIA
Department of Corrections

CERTIFICATION OF ADULT AUTHORITY ACTION

TO THE DIRECTOR OF CORRECTIONS:

The Adult Authority took the following action at S.F.(Special Meeting), relating to parolees

ON June 30, 1961

A-9428A ELHAMER, William (SANTA ANA)

Parole canceled--return to prison ordered for the reasons set forth in the report of which this order is a part. (Term refixed at maximum in accordance with Resolution adopted 3-6-51.)

This is to certify that the above order is a true and correct copy of the action of the Adult Authority as shown on

PAGE 673 VOLUME 30 of the official minutes.

DATE July 5, 1961

JOSEPH A. SPANGLER
Administrative Officer

By ~~W. SUTTON,~~
~~SUPERVISING~~ CLERK 2, California Adult Authority

THE WITHIN INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
ATTEST:

CALIFORNIA STATE PRISON
AT SAN QUENTIN
BY
RECORDS OFFICER

(AFFIX SEAL)

EXHIBIT E

State of California

Youth and Adult Corrections Agency

ADULT AUTHORITY

Meeting of
June 30, 1961
HELD AT SAN FRANCISCO (Special Meeting)

EXCERPT FROM MINUTES OF MEETING HELD ON THE ABOVE DATE FROM OFFICIAL RECORDS ON FILE IN THE OFFICE OF THE ADMINISTRATIVE OFFICER AT SACRAMENTO, CALIFORNIA.

TO WHOM IT MAY CONCERN:

Present were: O. Jahnsen, Member; C. Fitzharris, Vice-Chairman.

* *

PAROLES CANCELLED - RETURN TO PRISON ORDERED:

The Chief, Adult Parole Division presented reports in writing in each of the below-listed cases, (these reports are now on file in the office of the Adult Authority at Sacramento), charging that the below-named prisoners had wilfully violated the terms and conditions of their paroles.

The action in each of the following listed cases was "Parole cancelled, return to prison ordered for the reasons set forth in the report of which this order is a part."

A-9428A ELHAMER, William (SANTA ANA)

Due cause being shown by the Chief, Adult Parole Division, it is hereby ordered, that the paroles heretofore granted the above-named and numbered prisoners be suspended, cancelled, and/or revoked, upon the grounds that the above-named parolees have violated the terms and conditions of their paroles as more particularly set forth in the Chief's charges which are made a part of this order of revocation.

It is further ordered, that the Chief, Adult Parole Division shall return said prisoners to the custody of the Director of Corrections to abide further action of the Adult Authority.

It is further ordered in accordance with a resolution adopted by the Adult Authority on March 6, 1951 that the above-listed prisoners who have terms fixed at less than the maximum shall be refixed at the maximum until further order of the Authority.

In the event any of said prisoners shall be found in any State other than California an application for a requisition for the return of said prisoners is hereby authorized and the Chief, or Deputy Chief, is hereby authorized to execute such application for, and on behalf of, the Adult Authority.

* *

A D O P T E D B Y The affirmative votes of:

O. Jahnsen, Member;
C. Fitzharris, Vice-Chairman.

(Signed) Joseph A. Spangler, Administrative Officer

A T T E S T
June 30, 1961

A T T E S T August 22, 1967

JOSEPH A. SPANGLER
Administrative Officer

EXHIBIT F

CDC - 244-A (39252)